

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

SOUTHERN CALIFORNIA EDISON COMPANY¹

Employer

and

Case 21-RC-21180

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, IBEW # 47, AFL-CIO, CLC

Petitioner

and

UTILITY WORKERS UNION OF AMERICA, LOCAL 246,
AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.² Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions.

¹ The name of the Employer appears as corrected at the hearing.

² The Employer timely filed a brief. Although the Petitioner and the Intervenor waived filing briefs, Petitioner argued orally. The submissions of both the Petitioner and the Employer were duly considered. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act and seek to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

Southern California Edison Company is a California corporation with its principal offices located in Rosemead, California, and a nuclear generating station located at the San Onofre Nuclear Generating Station (SONGS) in San Clemente, California, where it is engaged in the production and distribution of electricity. International Brotherhood of Electrical Workers, IBEW # 47, AFL-CIO, CLC, the Petitioner herein, filed a petition on January 6, 2010, seeking to represent the Maintenance Performance Planning Procedure Writers, herein called the maintenance procedure writers, of the Employer that work at SONGS in San Clemente, California.

The Utility Workers Union of America, Local 246, AFL-CIO, the Intervenor herein, moved to intervene because, on October 21, 1966, in Case 21-RC-10186, it was certified to represent all of the employees of the Employer at the Employer's nuclear plant in San Onofre, California, excluding the technical assistants, statisticians, storekeepers, professional employees, guards and supervisors as defined in the Act.

ISSUE

The only issue presented at the hearing is whether the petitioned-for unit of maintenance procedure writers is an appropriate unit.

POSITIONS OF THE PARTIES

The Employer argues that the petitioned-for unit is not a separate appropriate unit and that the appropriate unit includes all procedure writers employed by the Employer in the Site Procedures Group section of the Operations Division of SONGS. The Petitioner and the Intervenor submit that maintenance procedure writers by themselves share a sufficient community of interest and, therefore, that the petitioned-for unit is an appropriate unit. However, in the event that the Region finds that the appropriate unit includes other procedure writers employed by the Employer

at SONGS, the Petitioner and the Intervenor stated that they are willing to proceed to an election in that unit.

DECISION SUMMARY

Based on the record as a whole, I find that the petitioned-for unit is not appropriate, and I conclude that an election should be directed in the following unit:

Included: All full-time and regular part-time operations procedure writers, maintenance procedure writers, and balance of site (BOS) procedure writers employed by the Employer at the San Onofre Nuclear Generating Station (SONGS) located in San Clemente, California.

Excluded: All other employees, health physics procedure writers, office clerical employees, professional employees, employees on temporary work assignment (TWA), confidential employees, guards and supervisors as defined in the Act.

FACTS

A. The Employer's Operations

The Employer operates an electric power plant at SONGS in San Clemente, California. Electricity is produced there by two turbine generators fueled by steam generated from a nuclear power reactor. Because the Employer's operations include a nuclear power reactor, the Nuclear Regulatory Commission, herein called the NRC, regulates the Employer's operations to protect the health and safety of the public. The NRC issues a regulatory guide that the Employer is required to follow, setting forth procedures for the operation and maintenance of SONGS.

SONGS has approximately 3,000 procedures governing all aspects of its operation and maintenance, which must be followed verbatim. Procedure writers, the employees at issue in this matter, typically write revisions to procedures that are requested from any part of the organization where a deficiency is recognized or a need to improve is identified. There are at least three principal groups of procedure writers totaling 23 procedure writers — maintenance procedure writers, operations procedure writers, and nuclear procedure writers, referred to by the parties as

“balance of site” (BOS) procedure writers.³ The eight maintenance procedure writers who comprise the petitioned-for unit, write maintenance procedures. The nine operations procedure writers write operations procedures. And the six BOS procedure writers write formatting procedures and also review procedures written by the maintenance and operations procedure writers.

The NRC conducts periodic reviews of the Employer’s operations. It provides the Employer with written assessments of its findings and, when problems are identified, it requires the Employer to respond in writing with specific corrective actions.

In recent reviews the NRC criticized several aspects of the Employer’s operation of SONGS. One of the issues the NRC identified as requiring improvement throughout SONGS was “human performance.” The Employer investigated why it was having human-performance issues and concluded that it was having these issues in part because its business was not being performed consistently throughout the procedure group organizations. The Employer notified the NRC that among the many ways it intended to improve human performance was that it planned to centralize the division procedure groups under the operations division.⁴ By letter dated October 30, 2009, the Employer notified SONGS that the centralization had begun and would be completed by March 2010.

The Employer implemented various changes in conjunction with the decision to centralize the procedure groups. First, it selected James Joy as manager of this group. At a regular staff meeting on November 10, 2009, the Employer announced Joy’s selection and details of the consolidation “to ensure consistency and quality.” Shortly thereafter, among other changes,

³ The record does not indicate how many other procedure writers work for the Employer besides those in these three principal groups or what they do. In the record, reference was made to health physics procedure writers and others on temporary assignment, but the Employer does not seek to include them in the unit.

⁴ Twenty-seven actions were described in an April 21, 2009 letter from the Employer to the NRC.

procedure writers who had previously worked on different floors of the same building, were relocated to the same floor. As of the date of the hearing, all but two of the procedure writers had been relocated.

B. COMMUNITY-OF-INTEREST FACTORS

1. Functional Integration

The record reveals significant functional integration among the three groups of procedure writers. All three groups are integral elements of the Employer's business of providing electrical power. Using the same computer system and the same procedure-writing guide, all three groups write procedures for the entire facility, and none of the groups is limited to a particular location or to particular machinery at SONGS. Moreover, all aspects of the procedure writers' jobs, from receipt of a request for a change to implementation of the change in the procedure, are performed on the same floor of the same building.

2. Frequency of Contact Among Procedure Writers

Because procedure writers mostly work independently at their individual computers, their face-to-face interactions on work-related issues are limited. When a request for a procedure change is made, it is sent to the appropriate group—maintenance, operations, or BOS—and the supervisor of that group assigns the request to one of the writers. The writer may confer with a subject-matter expert when drafting a procedure, and eventually submits the draft procedure to reviewers for comments. At present the maintenance and operations procedure writers also submit their procedures to the BOS procedure writers for review, apparently mostly to check formatting.⁵ When the procedure writers receive comments back, they resolve the comments with reviewers

⁵ The Employer's witness testified that at some point in the future the Employer intends to eliminate the final review by BOS procedure writers and have BOS procedure writers spend all of their time writing procedures. However, he testified that it would be a slow process because maintenance and operations procedure writers first have to be trained to correct their own errors.

until they have a final document that they send to supervision for approval. However, most of this communication is performed by computer rather than in face-to-face communication. At present, while there is some casual interaction among the employees in all three groups, the primary work-generated contact procedure writers have with each other is at staff meetings. Because the three procedure-writer groups have been in the process of relocating to the same floor, they have had increasingly more frequent interaction at the staff meetings, and the new manager anticipates that the relocation will result in more frequent work-related contact generally. In addition to staff meetings, all the procedure writers attended training sessions together conducted by the Procedure Professionals Association and they all use the same computer-based training lab.

While the procedure writers may not have extensive face-to-face contact with each other during the workday on work-related issues, they do have contact during regular daily and weekly staff meetings, during training, and in the computer lab. And now that they are located in the same area, they have frequent social interaction. They all use the same lunchroom, as well as the same bathrooms and parking lot.

3. Transfers

The record establishes that three employees have transferred among the three groups of procedure writers—one BOS procedure writer transferred to operations, one BOS procedure writer transferred to maintenance, and one maintenance procedure writer transferred to BOS. In addition, when recent vacancies in the maintenance procedure writers group were advertised, some BOS procedure writers applied and were rated by Human Resources as sufficiently qualified to be interviewed. Although the BOS procedure writers were not selected for the positions, the Employer anticipates that as a result of the consolidation, more procedure writers will apply for positions in other groups.

4. Job Skills and Functions

Although the record does not contain any written job descriptions for any of the procedure writer groups, the manager as well as a maintenance procedure writer testified about the knowledge and skill requirements and specific job functions of maintenance, operations, and BOS procedure writers. The job of a procedure writer is, as its name implies, to write procedures. Both witnesses testified that some technical knowledge is required to work as a maintenance or operations procedure writer, while BOS procedure writers have more knowledge and skill in word processing. Most maintenance procedure writers have some engineering background, but it is not required. Similarly, no particular level of education or degree is required. What is desirable, according to the Employer, is some knowledge of the subject matter. One of the current maintenance procedure writers who transferred from the BOS procedure writing group has no technical background at all. All procedure writers, regardless of which group they work in, use the same procedure-writing guide, the same computer program, and the same word-processing skills to write procedures.

5. Wages and Other Working Conditions

Although the record does not reveal the wage scale for the procedure writers, their wages are all in a similar range. The record contains uncontradicted evidence that procedure writers in all three groups receive the same benefits including health insurance, retirement, and vacations. They all use the same conference rooms, computer lab, lunchroom, the same restrooms, and those who drive to work all use the same parking lot.

6. Supervision

James Joy, whose installation as Manager of the Site Procedures Group was the first step in consolidating the Operations Division, supervises the procedure writers in all three groups. While each of the three groups— maintenance, operations, and BOS— has a supervisor as well, Joy is the overall supervisor for the procedure writers in the three groups, and the three group supervisors report directly to him.

7. History of Collective Bargaining

Although there is no history of collective bargaining for any of the procedure writers at SONGS, on October 21, 1966, in *Southern California Edison Company*, Case 21-RC-10186, the Intervenor was certified to represent all the employees at SONGS except the technical assistants, statisticians, storekeepers, professional employees, guards and supervisors as defined in the Act.⁶

ANALYSIS

The Board does not compel a petitioner to seek any particular appropriate unit. *Overnite Transportation Company*, 322 NLRB 723, 723 (1996). Rather, the Act requires only that the unit be “appropriate,” that is, appropriate to ensure to employees “the fullest freedom in exercising the rights guaranteed by the Act.” *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); *Dinah’s Hotel and Apartments*, 295 NLRB 1100 (1989).

When making a determination as to whether a petitioned-for unit is “appropriate” under Section 9(b) of the Act, “the Board’s discretion in this area is broad, reflecting Congress’ recognition ‘of the need for flexibility in shaping the [bargaining] unit to the particular case.’” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985) (quoting *NLRB v. Hearst Publications, Inc.*,

⁶ The Intervenor presented no witnesses, collective-bargaining agreements, or other evidence showing that it has represented any procedure writers of the Employer at SONGS since 1966.

322 U.S. 111, 134 (1944)). In exercising its discretion, the Board considers a petitioner's desires relevant. *AIRCO, Inc.*, 273 NLRB 348 (1984) However, the petitioner's desires are not controlling. The Board must still determine whether the petitioned-for unit is appropriate. *AIRCO, Inc.*, supra.

When defining an appropriate bargaining unit, the Board looks to whether the affected employees have a sufficient community of interest to constitute an appropriate unit. *Tidewater Oil Co. v. NLRB*, 358 F.2d 363 (2d Cir. 1964), cert. denied 380 U.S. 910 (1965). The Board considers a number of factors in determining whether or not a given group of employees shares a sufficient community of interest to constitute an appropriate unit, including: similarity in the scale and manner of determining wages; similarity in employment benefits, hours of work, and other terms and conditions of employment; similarity in the qualifications, skills and training of employees; frequency of contact and interchange among employees; geographic proximity; common supervision; functional integration; and history of collective bargaining. *Overnite*, supra; *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962) (each unit determination must have a direct relevancy to the circumstances within which the collective bargaining is to take place). However, broad, system-wide units are preferred in public utilities industries because of "the essential service rendered to their customers and the integrated and interdependent nature of their operations." *Colorado Interstate Gas Co.*, 202 NLRB 847, 848 (1973).

In the present case, the Employer has an integrated operation in which procedure writers in all three groups, maintenance, operations and BOS, perform integral functions because the procedure writers in all three groups write procedures affecting the Employer's entire operations at SONGS. None of these groups is limited to a particular geographic area or a

particular part of the machinery. The record shows that procedure writers in all three groups enjoy similar wages, benefits, hours, and working conditions. They use the same procedure-writing guide, the same computer-based program, and the same word-processing program to perform their jobs. Now that they are relocated to the same floor in the same building, they attend the same regular staff meetings.

In addition to functional integration, there is ample evidence of contact among the procedure writers in all three groups during working and nonworking time, and there is no evidence that the maintenance procedure writers have less contact with the rest of the procedure writers than do operations or BOS procedure writers. All procedure writers have some contact with each other during work time, and more is anticipated as a result of the relocation. They all attend regular staff meetings and receive training together. In light of their relocation, they also share a lunchroom and other facilities during nonworking time.

While the Petitioner and the Intervenor argue that maintenance procedure writers do not share a community of interest because of their technical background, the maintenance procedure writers, like the operations and BOS procedure writers, are not required to have any special degree or even any quantifiable level of technical knowledge. While most maintenance procedure writers have some kind of engineering background, it is not required. And a BOS procedure writer with no engineering background whatsoever recently transferred to the maintenance procedure group.

Finally, the Petitioner argues that maintenance procedure writers do not share a community of interest with the other procedure writers because they have a separate supervisor. This factor weighs in favor of the petitioned-for unit. However, separate supervision does not compel a finding that such a unit is appropriate. *Aztar Indiana Gaming Company*, 349 NLRB 603

(2007). In this case, I find that this factor is outweighed by all the other factors supporting a conclusion that a separate maintenance procedure writers unit is not appropriate. In view of the record as a whole, including the fact that Joy is the overall supervisor for all three groups of procedure writers, I find that the maintenance procedure writers' separate supervision is insufficient to demonstrate that maintenance procedure writers have a separate community of interest apart from the operations and BOS procedure writers.

Based on the evidence and the record as a whole, I find that a unit of the procedure writers at SONGS, consisting of maintenance, operations, and BOS procedure writers, is an appropriate unit. My determination is consistent with prior decisions in which the Board has expressed its reluctance to "fragmentize" units in public utilities.⁷ Accordingly, I will direct an election in the following unit:

Included: All full-time and regular part-time operations procedure writers, maintenance procedure writers, and balance of site (BOS) procedure writers employed by the Employer at the San Onofre Nuclear Generating Station (SONGS) located in San Clemente, California.

Excluded: All other employees, health physics procedure writers, office clerical employees, professional employees, employees on temporary work assignment (TWA), confidential employees, guards, and supervisors as defined in the Act.

There are approximately 23 employees in the unit.⁸

⁷ See, e.g. *Colorado Interstate Gas Co.*, *supra*.

⁸ As I have directed an election in a unit different than the petitioned-for unit, under Section 11031.2 of the Casehandling Manual, Part Two, Representation Proceedings, Petitioner must submit a sufficient showing of interest for this unit within 14 days of this Decision.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Brotherhood of Electrical Workers, IBEW # 47, AFL-CIO-CLC; the Utility Workers Union of America, Local 246, AFL-CIO; or neither**. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office on or before **June 9, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever

proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,⁹ by mail, or by facsimile transmission at 213-894-2778. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

⁹ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by June 16, 2010. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,¹⁰ but may not be filed by facsimile.

DATED at Los Angeles, California, this June 2, 2010.

/s/James F. Small

James F. Small, Regional Director
National Labor Relations Board
Region 21
888 S. Figueroa Street, 9th Floor
Los Angeles, CA 90017

¹⁰ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.